THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P. NO.6731 OF 2006

BETWEEN:

Y.Relli Kula Sankshema Sangam, rep. By its President Y.Giri and others.

… petitioners

Vs.

The Municipal Corporation of Guntur, rep. By its Commissioner and another

…respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

W.P. NO.6731 OF 2006

ORAL ORDER

The four petitioners are unions having individuals belonging to the Scheduled Castes and Scheduled Tribes as its

members. They desire to partake of the largesse of the Guntur Municipal Corporation by way of executing sanitation works within the territory of the Municipal Corporation. The petitioners are registered societies. They were registered in accordance with G.O.Ms.No.581 dated.06-11-1996. The petitioners' claim that its members are eking out livelihood by sanitation work.

The 1st respondent called for tenders for sanitation work in the sanitary divisions of the Corporation, on 23-01-2006. The petitioners submitted their bids and applied for award of work in respect of package Nos.4,6,7 and 8. The 1st petitioner applied for the 4th package and quoted Rs.2003.513/- for each day. The 2nd petitioner also applied for the 4th package and quoted Rs.2003.513/- for each day. The 3rd petitioner applied for the 6th package and quoted the same amount for each day. The 4th petitioner also applied for the 6th package and quoted the same amount for each day. The 5th petitioner applied for the 7th package and quoted Rs.968.0175/- per each day. The 5th petitioner also applied for the 8th package quoting Rs.2003.513/- per each day. Similarly the 2nd petitioner applied for the 8th package also and quoted Rs.2003.513/- per each day.

The petitioners allege that the Manager and Secretary of the Corporation, on instructions of the 1st respondent finalized the names of the 20 agencies on 31-03-2006 setting out a list of 20 agencies which are stated to have quoted the lowest price in their tenders and placed the proposals for approval of the 2nd respondent at the meeting scheduled on 04-02-2006. The petitioners having secured a copy of the proposals of the Manager and Secretary of the 1st respondent

have learnt that the list of societies tendering the lowest rates, prepared by the Manager and Secretary of the 1st respondent contained erroneous and misleading information and the petitioners though having quoted the lowest rates for package No.4,6, 7 and 8 were not shown as societies which had quoted the lowest rates. In the circumstances the writ petition is filed alleging that the action of the 1st respondent in failing to recommend the names of the petitioners-societies for package Nos.4,6,7 and 8 despite having quoted the lowest rates is contrary to the Municipal Corporation of Hyderabad Tender Rules,1970. According to the petitioners Rule.6 and 8 of the Rules ordain that the lowest tender shall ordinarily be accepted and in case when the tender other than lowest tender is accepted confidential records should be kept of the reasons for doing so as to be made available to the inspecting officers of the Audit department if required. Rule.8 is to the effect that where the lowest tender is rejected for reasons recorded, the next lowest tender shall be accepted unless adequate grounds can be assigned for rejecting that tender also. Quoting these rules the petitioners contend that the 1st respondent acted arbitrarily and in transgression of the statutory regime in recommending the names of societies, which had quoted rates higher than the petitioners.

The Commissioner of the 1st respondent has filed a counter-affidavit. The counter-affidavit states, to the extent and relevant material, that the petitioners failed to produce experience certificate along with tender schedules, their tenders were found defective, as proof of experience was not filed. It is admitted that the petitioners had applied for tenders to package Nos.4, 6, 7 and 8 but had failed to submit along with their bids, proof of experience certificates. The counter further states that

the tenders were finalized according to the rules of the tender conditions but could not be approved as the meeting of the 2nd respondent-council had not taken place.

This Court by an interim order dated.04-04-2006 directed the respondent-Corporation to consider the lowest tenders in respect of package Nos.4, 6, 7 and 8 if these packages are not reserved to be allotted on nomination basis. Pursuant to the interim direction it is stated that after a contempt case was filed by the petitioners, the respondent-Corporation has awarded sanitation works to the petitioners in respect of package Nos.4,7 and 8 on 11-08-2006. Thereafter the respondent-Corporation has filed a counter-affidavit along with an application seeking vacation of the interim order on 03-06-2006. As the writ petition is being disposed of finally now, it is not necessary to consider the application seeking vacation of the interim order.

The tender notification (the relevant clause being clause No.2) reads as under:

"*According to G.O.Ms.No.581, M.A. Dated.06-11-1996 retired employees of Public Health Department, their children/ and other Scheduled Castes and Scheduled Tribes people who have experience in sanitation works and badily workers are alone entitled to be members of the society.*"

Clause. 2(b) of the tender notification stipulates that such agencies alone may participate in the tender. No doubt clause.2 of the tender schedule stipulates that only persons having experience in sanitation works are eligible to be members of the society and only such agencies are entitled to participate in the tenders. However, the length of experience required or other criteria by which experience in sanitation work is to be measured is not specified in the tender notification. There is no stipulation what-so-ever in this tender notification

that a bid pursuant to a tender notification should be accompanied by an experience certificate. In the absence of any stipulation of an experience certificate accompanying the bid, the petitioners are not obligated to enclose an experience certificate along with the bid/tender. It is not open to the 1st respondent a public authority, to penalize the citizen for its own vague and negligent drafting of tender conditions. The petitioners claim to be societies comprising of Scheduled Castes and Scheduled Tribes persons and if the 1st respondent a public authority having on call vast resources of drafting talent can conjure up such inelegant and vague tender conditions, it cannot reasonably be expected that societies comprising Scheduled Castes and Scheduled Tribes persons will be able to infer from such vague language a requirement that an experience certificate should accompany the bid. In any event experience certificate accompanying the bid is not a condition of the tender notification. If the respondents desire to find out experience in the context of such vague tender notification the 1st respondent ought to have called upon the petitioners to submit the details of the experience of its members in doing sanitation work. In any event their tenders could not have been rejected for consideration on the singular ground than their bids were not accompanied by experience certificate. Clause.7 of the tender notification dated.23-01-2006 stipulates that societies of Scheduled Castes and Scheduled Tribes should have an experience of six months and below one year. Even if this were to be read as an experience requirement in terms of the duration, in the absence of any stipulation in the tender notification that the experience certificate should accompany the bids the petitioners cannot be penalized for failing to append experience certificates with their bids. The

rejection/non consideration of the petitioners' bids on the solitary ground that they had not furnished experience certificates along with the bids is therefore seen to be irrational and arbitrarily.

As the counter-affidavit does not contest the petitioners' assertion that their bids were lowest in respect of the package Nos.7, 8 and 9 (Package No.6 having been reserved for award on nomination basis), in view of Rule.6 and 8, the 1st respondent is obligated to preferentially consider the petitioners' bids. In view of the non traverse in the counter-affidavit of the petitioners' assertion that their bids were the lowest, the inference is compelling that the petitioners were the lowest bidders in respect of package Nos.4,7 and 8. The petitioners should therefore entitled to allotment of sanitary works in respect of package Nos.4,7 and 8. As the petitioners do not challenge the reservation of the sanitation works in favour of children of Municipal workers on constitutional grounds not do they challenge *per se* the vagueness of experience requirement, this Court is not inclined to go into that question in this writ petition. But the respondent-Corporation will perhaps do well to consider whether creating a contractual opportunity exclusively to the children of Municipal employees would be consistent with the injunctions of Article. 15(2) of the Constitution.

The writ petition is allowed as above but in the circumstances without costs.

GODA RAGHURAM,J

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***TSNR**